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Supreme Court of the United States

OCTOBER TERM, 1954

LUTHER C. HESS and ALASKA JUNEAU GOLD MINING COMPANY, a corporation, *Petitioners,*

vs.

KARL F. DEWEY, Commissioner of Taxation of the Territory of Alaska, *Respondents.*

PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

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PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

To the Honorable EARL WARREN, *Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:*

Petitioners above named pray that a writ of *certiorari* issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above entitled case on May 25, 1954.

OPINION BELOW

The opinion of the District Court for the Territory of Alaska, Division Number 1, is reported at 102 F. Supp. 430. The opinion of the Court of Appeals as yet unreported, will be found in the Appendix to this petition (pp. 17-34). Mullaney died during the pendency of the case and the court substituted the name of his successor Karl F. Dewey.

JURISDICTION

The judgment of the Court of Appeals was entered on May 25, 1954 (App. hereto p. 35). Petition for Rehearing denied June 23, 1954. The jurisdiction of this court is invoked under Section 1254 of the new Federal Judicial Code.

QUESTIONS PRESENTED

Whether c. 10 of the Session Laws of Alaska, 1949, which purports to be a general property tax, is a valid act in view of the general provisions (and limitations) of the Alaska Organic Act, §9, as amended by the Act of Congress of June 3, 1948, c. 396, 62 stat. 302, 48 U.S.C.A., §78 and whether said enactment does not violate the provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States and the Civil Rights Act of May 31, 1870, c. 114, §16, stat. 144. Sec. 1977 R.S.

STATUTES INVOLVED

The pertinent portions of the Organic Act of Alaska and of the statutes involved are set out in the Appendix to this petition (pp. 37-51, 52, 53).

STATEMENT

This litigation is of great interest and importance, not only to the petitioners, but to all tax payers of Alaska. The public interest arises because of accrued taxes involved.

In 1949 the Alaska Legislature, by its c. 10 of the 1949 Session Laws, enacted what purported to be a general property tax. This was the first attempt in Alaska to impose an ad valorem tax. The petitioners are tax payers of the Territory who challenged the validity of the Act.

The Court below has sustained the validity of the legislation.

The statute, Chapter 10, in Section 3 thereof, purports to levy a tax on all real and personal property within the Territory of one percentum of the assessed value. Section 4 of the Act provides that the tax levied under the provisions of Section 3 upon property within the limits of an incorporated city or town, independent school district or incorporated school district in the Territory shall be assessed, collected and enforced in the manner prescribed by the Property Tax Law of the municipality or district (that is, by local ordinances) and turned over to the cities and school boards etc. to be retained by them. The Act of the Legislature in question while purporting to make a general and equal levy on all property in the Territory, provides for different methods of assessment and collection of the taxes. It provides for the collection of taxes within cities and school districts, etc., according to the ordinances of the different cities, and districts, with the time and method for assessment and collection of taxes, dates of payment, and discounts, varying from city to city or district, and all of these at variance with the method of assessing and collecting taxes in the Territory outside of cities and school districts. The law is so worded that a city or school district or public utility district may collect the tax and retain it for municipal purposes or refuse to collect it at all as the record shows was done, so that the tax is not uniform within the language of the Organic Act and it is not collected under a general law.

The said Act of the Legislature contains no provision

for a general territorial board of equalization to equalize all assessments. Each city and each school district, as an individual taxing unit, has its own separate, independent board of equalization. The Territory itself has four separate boards in the four judicial divisions, but it has no over-all board. And the Territorial boards in the several judicial divisions have no connection with the municipal and school district boards and no jurisdiction over them.

Early in 1950 suit was brought by these petitioners in the District Court for the Fourth Judicial Division at Fairbanks, Alaska, seeking an injunction enjoining the Tax Commissioner from enforcing the provisions of the said Chapter 10 hereinabove referred to. The City of Fairbanks and the Fairbanks School District were also made defendants in the action.

The Trial Court dismissed the action as to the City of Fairbanks and the Fairbanks Independent School District because they had not assessed or attempted to collect any portion of the Territorial tax. The District Court for the 4th Judicial District held the Alaska Property Tax to be invalid and issued an injunction to prohibit its enforcement. *Hess v. Mullaney,* 91 F. Supp. 139.

An appeal was taken by the Tax Commissioner to the U. S. Court of Appeals for the Ninth Circuit, which court reversed the District Court (See 189 F. (2d) 417), on the ground that the tax payers had a proper remedy at law and that injunction should not have issued. The court did not pass on the validity of the law. It is interesting to observe, however, that the

Court of Appeals stated "As to defendants other than appellant the Court was clearly correct in dismissing the action" (189 F.(2d) at p. 420). The court recognized that the law was not being enforced by the other taxing units in Alaska.

Following said decision the petitioners paid the tax under protest and brought the within suit for refund. The cause was tried before the District Court for the First Judicial Division of Alaska at Juneau. That court, ignoring the decision of the District Court for the Fourth Judicial Division, sustained the validity of the law in an opinion dated February 18, 1952. *Hess v. Mullaney,* 102 F. Supp. 430.

Thereupon the case was again taken to the U. S. Court of Appeals which court affirmed the District Court by its decision of May 25, 1954, and which is printed in the appendix to this petition. In that opinion the Court of Appeals holds that the municipality and school districts involved in the first cause, that is the injunction case, and the other municipalities and school districts whose records were introduced in evidence in the last case, may have been presumed to have levied the 1% property tax and that it can be presumed that it was included in the first ten mills of the municipal and school district taxes (App. pp. 17-34).

However, in the opinion of the U. S. Court of Appeals for the Ninth Circuit, that is the last opinion (App. p. 23), the Court of Appeals says:

> "There is no doubt but that the absence of an arrangement for some overall method of equalization is a serious defect in a statute which unques-

tionably is not only unique but wanting in evidence of good legislative workmanship."

It is to review that judgment of May 25, 1954 that the writ of *certiorari* is being sought.

SPECIFICATIONS OF ERROR TO BE URGED

The Court of Appeals erred:

1. In holding that the provisions of Section 9 of the Alaska Organic Act, 37 Stat. 512, as amended, 48 U.S.C., Sec. 77, 78, did not render invalid the Alaska Property Tax Act, Ch. 10, Session Laws of Alaska, 1949, since the latter act does not provide for uniformity within the same class of subjects, or for collection under the general laws, all as is required by the Organic Act of Alaska.
2. In holding that the Alaska Property Tax Act is not in violation of the 5th and 14th Amendments to the Constitution of the United States and the Civil Rights Act.
3. In affirming the District Court for the First Judicial Division of Alaska, thereby overruling the District Court for the Fourth Judicial Division; and in entering judgment for respondents.

REASONS FOR GRANTING THE WRIT

1. The Alaska Property Tax Act, Ch. 10, Session Laws of Alaska 1949, as amended by Ch. 88, Session Laws of 1949, is, as the Court of Appeals says, "unique" and contains a "serious defect" by not providing for a general over-all method of equalization of assessments (App. pp. 37, 52). The Organic Act of Alaska is an Act

of Congress which creates a territorial form of government for the Territory. Section 9 of the Act (App. p. 53) contains the legislative power which is granted to the Territory and the limitations thereon. An amendment was made to this section with reference to the tax on mining claims (App. p. 53) but both the original Section 9 and the amendment thereto provide that "all taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessment shall be according to the actual value thereof." Section 9 contains the further provision that "all laws passed or attempted to be passed by such Legislature in said Territory inconsistent with the provisions of this section shall be null and void." Therefore, Congress has placed a limitation on the Legislature in respect to taxation of property and has ordained that any act of the legislature beyond the powers given it by Congress is null and void.

Section 3 of Ch. 10 of the Session Laws of Alaska, 1949, purports to levy a general tax on all property in the Territory wherever situated, but Section 4 destroys the uniformity of the tax when it provides that the tax levied within the municipalities, school districts and public utility districts shall be assessed, collected and enforced pursuant to the provisions of the ordinances or municipal law of the cities and school districts etc. It also permits the tax to be retained by them. In the case of *Anderson v. Mullaney,* 343 U.S. 415, 418, the Supreme Court, speaking of another Alaska tax law, said:

> "We do not remotely imply that the burden is on the taxing authorities to sustain the constitu-

tionality of a tax. *But where the power to tax is not unlimited, validity is not established by the mere imposition of a tax.*" (Emphasis supplied.)

The record shows that the total taxable property in the Territory in the four Judicial Divisions outside of cities and school districts in the year 1949 was $48,112,548.78 (R. 120). Selecting five taxing units consisting of cities and school districts, namely, Fairbanks, Fairbanks School District, Juneau, Anchorage and Ketchikan, the total assessable value of property within these taxing units was $89,471,331.00 (R. 117, 119, 122, 141, 143). Those taxing units did not attempt to assess or collect the territorial tax purported to be levied under the Alaska Property Tax Act. There is no way to compel them to do so. Since there is no provision in the Alaska Property Tax Act to enforce the collection and since if it had been collected it would have been retained by the municipalities and school districts for municipal and school district purposes, the tax and the assessments are not uniform and the property is not taxed according to a general law within the meaning of the mandate of the Organic Act. The Petitioners did not attempt to compute the total amount of property in the Territory which would be exempt under this procedure but did select the larger cities. Petitioners' property, in this case, lies outside of any city or school district.

The Court of Appeals in its first decision reversing the decision of the District Court in the injunction case, 189 F.(2d) 417, agreed with the lower court in its finding that the City of Fairbanks and the Fairbanks School District had not attempted to assess or collect the terri-

torial tax. In its second opinion affirming the decision of the District Court for the First Judicial Division and holding the tax to be valid, the Court of Appeals proceeds on the assumption that the first ten mills of the municipal tax in these various cities and school districts might be considered as the Alaska Property Tax (See Decision of May 25, 1954, App. 17). We think this assumption entirely erroneous for the reason that the City of Fairbanks not only did not collect the Alaska Property Tax but passed a resolution declaring that it would not collect it (R. 76). The other cities and school districts did not concern themselves with the tax. Therefore, the record abundantly shows that undoubtedly two-thirds of all taxable property in the Territory escaped taxation under this law and became exempt from its provisions. This is not the fault of the administration of the law, but the defect is contained in the law itself which is a subterfuge and so apparently designed to exempt all property within municipalities and school districts from the operation of the tax.

Since the law is unique, as stated by the Court of Appeals, there have of course been no decisions of any courts interpreting the provisions which it contains. It is submitted that the decision below does not settle the general issues or finally determine the validity of this Tax Act.

Territorial taxes are used for general territorial purposes. Municipal and school district taxes are used for municipal and school purposes only. Therefore, by making it possible for owners of property in municipalities and school districts to avoid the payment of any

territorial taxes under this law, it will be readily seen that the law is discriminatory. The questions involved are a mixture of federal and non-federal questions and the decision below is wrong in the light of general principles. It is in direct conflict with the decisions of the highest state courts and of courts of appeals on federal and non-federal matters. It is also in conflict with the provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States and with the Civil Rights Act (R.S. 1977) by withdrawing from a certain class of property owners equal protection of the law.

Not only does the act permit an exemption from taxation of most of the property in the Territory, but it withdraws from taxpayers and property owners outside incorporated cities and school districts the right of equalization.

In order to make the burden of taxation equal and uniform the taxes must necessarily be imposed upon all the taxable property of the entire Territory.

See *James Gray on Limitation on Taxing Power*, Secs. 432-440.

Petitioners have not urged that classification of property was involved in this case. Certainly the Act in question bears no language indicating legislative intent to classify. If there can be considered classification then it is on geographical lines.

The Court of Appeals, in its opinion (App. 21) stated:

> "Unquestionably systematic geographical discriminations in the burden of taxation have been held void. *Cumberland Coal Co. v. Board,* 284 U.S. 23, 28."

However, the Court of Appeals states: "We find here no evidence of any deliberate attempt by the Territory to provide that the general property tax should not be collected from city or district property. But even if there had been an express provision to that effect, it could not be held to be outside the *permissible range of legislative classification* for tax purposes if the whole scheme, in practical effect, imposes substantially the same tax burden on all property, wherever situated" (App. pp. 28-29). (emphasis ours)

Petitioners submit that the only classification which could possibly be involved in this case would be one on geographical basis and that the record shows that there was not the same tax burden on all property, wherever situated, and that most of it escaped the burden altogether and the cities and school districts continued to levy their own municipal and school district taxes, and nothing else, the same as they had done before the passage of the law. We contend that this was intended by the Legislature for the reason that the act is so drawn that the cities and school districts may do as they please with the assessment and collection of the tax. There is no authority in the Territory created by the law or otherwise to compel the municipalities to do anything except what they actually have done; that is, ignore the Act altogether and place the entire burden of this tax on the property owners outside incorporated cities and school districts. Petitioners are injured by being taxed while thousands of other property owners escape taxation.

2. The Court of Appeals in its decision dealing with the lack of provision for an over-all or territorial board

of equalization, refers to this as a "serious defect" but the court argues that petitioners are not injured because they made no showing that the assessed values of their property were higher than assessed values elsewhere. However, the law makes it impossible for any taxpayer to make any such showing. When the taxpayer comes before a board of equalization he has a right to review all assessments to see whether his are higher or not than others. He is not dealing only with the value of his own property, but he has a right to compare that value with the values placed on other property of similar nature. The Alaska Property Tax Act by omitting to set up any general board of equalization has withdrawn from the taxpayer the equal protection of the law which the Constitution gives him.

There can be no uniformity without equalization. This is fundamental. A taxpayer outside incorporated cities and school districts within any one of the four judicial divisions has no means of equalizing his assessments with those of property owners in cities and school districts anywhere, or with those of property owners outside his judicial division and in some other judicial division.

3. A flat tax on mining claims is authorized by the amendment to the Organic Act of June 3, 1948 (App. (p. 53) but the Legislature did not tax mining claims at a flat rate when they taxed them at $500.00 for each 20 acres or fraction of each such claim. The record shows that one mining claim owned by one of the petitioners contained only 6/10ths of an acre and was given exactly the same valuation as other mining claims containing

20 acres. Such is not a uniform or equal method of taxation.

4. The tax on boats, as provided in Ch. 88, Session Laws of Alaska, 1949, is in violation of the provisions of the Alaska Organic Act for it is not uniform with other taxes attempted to be levied under the Act. This tax on boats is an alternative tax and may be paid either on the basis of value or at $4.00 per net ton of the vessel's registered tonnage (App. p. 52).

The Court of Appeals argues that since the intervenor in the case paid the tax on its vessels, it cannot complain, and that since the petitioner Hess had no boats, he cannot complain. However, the court overlooked the fact that Mr. Hess had the right to have the tax on boats levied on the same basis as the tax on his producing mining claims and his mining machinery, that is, the tax provided in the Organic Act, Section 9 as amended, which says the assessment must be made according to the true and full value thereof. If Mr. Hess' property is assessed at its full and true value and all boats and vessels may be assessed at $4.00 per ton at the option of the owner, he is injured because he is taxed on another basis and therefore there is no uniformity of the taxation.

It would seem to be fundamental that taxes to be uniform and equal and levied under general laws, as most state constitutions and the Organic Act of Alaska provide, must be levied on all property alike, according to its classifications. Assessments must be equalized; and the tax be collected and enforced in the same manner.

The Alaska Property Tax Act, not only does not

make provision for these elements, but it makes it impossible for any taxpayer in any one of the dozens of taxing units in the Territory to obtain uniformity. The Court of Appeals in its opinion (App. p. 30) says:

> "We are concerned not with names or labels applied to taxes, nor with diversity of collecting agencies, but rather with the substantial impact and bearing upon the property and owners affected." Citing *Charleston Assn. v. Alderson,* 324 U.S. 182, 190, 191.

Petitioners are not complaining of names or labels, or collecting agencies, but of the impact on them and their property by applying the tax to them and not to others.

The court below, in upholding the law, if its decision and judgment are allowed to stand, will have established a precedent which will overturn the well established rules in property taxation.

The question presented here is substantial and of great public interest because of accrued taxes involved.

CONCLUSION

For the foregoing reasons, this petition for a writ of *certiorari* should be granted.

Respectfully submitted,

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Dated July 28, 1954

CERTIFICATE

I, H. L. FAULKNER, of Juneau, Alaska, a member of the Bar of the Supreme Court of the United States, counsel for petitioners, do hereby certify that in my judgment the foregoing petition for writ of *certiorari* is well founded, and I further certify that it is not interposed for delay.

Dated at Juneau, Alaska, July 28, 1954.

HERBERT L. FAULKNER
Counsel for Petitioners.

Appendices follow

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

LUTHER C. HESS and ALASKA JUNEAU GOLD MINING COMPANY, a Corporation, *Appellant*, v. KARL F. DEWEY, Commissioner of Taxation, Territory of Alaska, *Appellee*.	No. 13,533 May 25, 1954

Appeal from the District Court for the Territory of Alaska, Division Number One.

Before DENMAN, ORR and POPE, Circuit Judges.

POPE, Circuit Judge.

In 1949 the Alaska Legislature (Chapter 10, Session Laws of Alaska, 1949), enacted what purported to be a general property tax for that Territory. It was the first attempt in Alaska to impose an ad valorem tax upon property in the Territory generally. The appellants are taxpayers within the Territory who sought in the court below to procure a determination and adjudication that the law in question is invalid and void, primarily for want of uniformity. In this connection it is asserted that the law violates §9 of the Alaska Organic Act, as amended, (48 USCA §78), providing with respect to the Territory that all taxes shall be uniform upon the same class of subjects,[1] and that it operates to deny the appellants

[1] "All taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the true and full value thereof, except that unpatented mining claims and nonproducing patented mining claims,

due process of law under the Fifth Amendment and the equal protection of the law under the Fourteenth Amendment to the Constitution, and is as well violative of the Civil Rights Act, Title 42, §1981 USCA, prescribing that all persons shall be subject to "like * * * taxes, licenses and exactions of every kind and to no other."

The complaint of Hess alleges that he owns real and personal property of various kinds all situated outside the boundaries of any incorporated city; that in 1949 the defendant Commissioner levied and assessed upon such property a tax of $675.01 which he paid under protest. This sum plus interest he was required to pay he now seeks to recover on the ground of the alleged invalidity of the law.

Alaska Juneau Gold Mining Company alleged in its complaint in intervention that it owned substantial property in Alaska outside any municipality, or any school or public utility district, upon which a tax was levied and assessed in 1949 in the sum of $703. This sum, with interest demanded, intervenor paid under protest and now, like the plaintiff, seeks to recover on precisely the same grounds set forth in the complaint. The appeal is from the judgment which in effect rejected the claims of invalidity of the statute.

The principal claim of inequality and lack of uniformity in the law arises out of its different treatment

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which are also unimproved, may be valued at the price paid the United States therefor, or at a flat rate fixed by the legislature, but if the surface ground is used for other than mining purposes, and has a separate and independent value for such other purposes, or if there are improvements or machinery or other property thereon of such a character as to be deemed a part of the realty, then the same shall be taxed according to the true and full value thereof." (37 Stat. 514, as amended, 48 USCA §78.)

of property outside of incorporated cities, school districts and public utility districts on the one hand, and property within such cities and districts on the other. §3 provides that for the year 1949 and each subsequent year, "there is hereby levied, and there shall be assessed, collected and paid, a tax upon all real property and improvements and personal property in the Territory at the rate of one per centum of the true and full value thereof." (Note that this language covers all property without distinction.) §4 provides in part: "The tax levied under the provisions of Section 3 upon the property within the limits of an incorporated city or town, independent school district or incorporated school district in the Territory shall be assessed, collected and enforced in the manner prescribed by the property tax law of the municipality or district. * * * All of the tax levied under this Act which is so collected shall be remitted to such municipalities or school districts. * * * Taxes collected hereunder within a public utility district shall be handled in a like manner to those collected in cities or other incorporated municipalities, including collection costs, remissions and school millage levy provisions as set forth herein." §5 provides that: "The tax levied under the provisions of §3 upon property outside the limits of an incorporated city, independent school district, or incorporated school district or public utility district in the Territory shall be assessed, collected and enforced as provided in this Act."

Thus it will be seen that upon the face of the statute and according to its terms, §3 imposes a tax of one percentum or ten mills upon all real and personal property within the Territory and wheresoever situated. By §4 such tax upon property within a city, school district, or utility district is to be "assessed, collected and enforced in the manner prescribed by the property tax law of the municipality or district," and the tax thus collected in

the municipality or district is to be retained by such collecting entity subject to certain other provisions not here material that amounts collected by certain school districts and not used for school purposes shall revert to the territorial treasurer.[2]

It is claimed that this system of taxation as prescribed by the law itself is completely lacking in uniformity and equality and that in consequence thereof it is void. It is also asserted that as applied and enforced by the taxing authorities it operates to discriminate against the appellants and in its practical working bears so unequally on persons and property of the same class that it must be held to be unenforceable.

For the purposes of its administration it is provided in the law that assessors shall be appointed for each judicial division within the Territory to whom tax returns are required to be made. The record shows that within the Fourth Division, where the City of Fairbanks and the Fairbanks school district are located, substantially half of the assessable property is within the city and school district. In the First Division the property in the City of Juneau and the Juneau Independent School District constitutes more than twice as much assessable property as in the First Division outside of the municipalities and districts; and the same is true of the City of Ketchikan, also within the First Division. In the City of Anchorage there is nearly twice as much assessable property as in the whole of the Third Division outside of the city and districts.

It is argued that under these circumstances the classification made by the Act between property within and

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[2] In certain other cases where an incorporated municipality is within the boundary of the school district, the collections unused for school purposes are to revert to the municipality.

without municipalities and districts is arbitrary and unreasonable; in effect it amounts to an exemption from the tax of all this property within cities and districts; that what the territorial legislature has done has been to levy a tax of ten mills solely on property outside municipalities, school districts and public utility districts. This means, appellants say, that the ad valorem tax for the support of the Territory falls exclusively upon the outside property.

As was suggested in *Alaska Steamship Co. v. Mullaney,* 9 Cir., 180 F.(2d) 805, 817, we assume that the uniformity clause of the Organic Act requires the same measure of uniformity and equality which is required by the equal protection clause of the Fourteenth Amendment as applied to State taxing laws. Unquestionably systematic geographical discriminations in the burden of taxation have been held void. *Cumberland Coal Co. v. Board,* 284 U.S. 23, 28. We think that so far as the statute itself is concerned, it will not bear the construction which appellants attempt to place upon it. We observe here no provision for exemption of any property whatever from the 1% ad valorem tax which by the express provisions of §3 is levied upon "all real property and improvements and personal property in the Territory." It is true that §4 provides that the tax just mentioned as it applies to property within the limits of cities and districts "shall be assessed, collected and enforced in the manner prescribed by the property tax law of the municipality or district," and the same section also provides that when the tax so levied is collected, it may with certain exceptions be retained by the municipalities and districts for their own purposes. However, there is nothing in the Act to suggest that any part of the 1% tax shall not in fact be collected within the cities and districts. Rather, the unusual and perhaps novel aspect of the Act which gives rise to appellant's princi-

pal complaint relates not to who should pay the tax or from what property it should be collected, but rather which unit of government shall get the money.

It is difficult to perceive how so far as this aspect of the law is concerned it could make any difference whether the Territory of Alaska first collected into its treasury all the proceeds of the tax from all sources and then appropriated amounts equal to those collected from the municipalities and districts to such entities, or whether it simply let the cities and districts retain such collections as here provided. It is not unusual for states after collecting taxes on a state-wide basis to make distribution of revenues to municipal corporations, particularly in the case of school districts.[3] No requirements of uniformity or of equal protection of the law limit the power of a legislature in respect to allocation and distribution of public funds. *Gen. Amer. Tank Car Corp. v. Day*, 270 U.S. 367, 372; *Carmichael v. Southern Coal Co.*, 301 U.S. 495, 521, 522.

It is urged that the statute is invalid because it lacks the necessary mechanics to assure equalization of the assessed values between the different taxing units. The statute creates in each judicial division a Board of Assessment and Equalization. Each such Board is authorized to scrutinize the assessment roll and to take "corrective action" thereon. Any person whose name appears on the assessment roll may apply to the Board with respect to any alleged overcharge, error, omission or neglect of the assessor. Provision is made for an appeal "on a *de novo* basis" to the district court for the Territory of Alaska in such division. However, there is no provision for an over-all Board of Equalization authorized to equalize assessments either as between di-

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[3] Cf. footnote 14 in *Carmichael v. Southern Coal Co.*, 301 U.S. 495, 522.

visions or as between divisions and municipalities and districts.

The assessor, whose assessment roll is subject to revision by the Board of Equalization within his division, is authorized to prepare such roll only for property outside of the municipalities and school and public utility districts. The Act does not contemplate a review by the division Board of Equalization of assessments made within the several municipalities and districts.[4]

There is no doubt but that the absence of an arrangement for some over-all method of equalization is a serious defect in a statute which unquestionably is not only unique but wanting in evidence of good legislative workmanship. But with respect to the statute's failure to make provision for such equalization, we are not, at the suit of these appellants, permitted to pronounce the statute void on this account alone. There is no showing in the record that either of these appellants has suffered

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[4] §25(a) of the Statute authorizes an appeal to such a Board by "any person whose name appears on the assessment roll for any division *or who is assessed in any district.*" Conceivably the word "district" in the clause we have here italicized could be read in a generic sense so as to include cities, school districts, and public utility districts. However, the context of the statute indicates that assessments in such cities or districts were not considered to be subject to review by the Board. Thus §26 provides that after appeal has been taken the assessor shall furnish a record of the proceedings to be reviewed by the Board. §27 provides for notice of the hearings to be held by the assessor, and §29, while directing the assessor to give effect to the decisions of the Board, makes no provision for like corrections by any one else. §30 provides for refunds to taxpayers pursuant to the decisions of the Board to be made by the Tax Commissioner who collects taxes from property outside cities and districts but makes no provision for similar refund by any city or district.

any harm for lack of a general territorial Board of Equalization. There is no showing that assessed values in the divisions in which appellant's property is situated are higher than those elsewhere. Appellants therefore are confronted by the rules stated in *Roberts & Schaeffer Co. v. Emmerson,* 271 U.S. 50, 54, 55: "But the plaintiff is not in a position to raise this question. As this Court has often held, one who challenges the validity of state taxation on the ground that it violates the equal protection clause, cannot rely on theoretical inequalities, or such as do not affect him, but must show that he is himself affected unfavorably by the discrimination of which he complains."

Appellants further contend that whatever may be said for the law as written, yet the manner in which taxes are in fact collected in some places, and in other places either not collected, or not collected in full, amounts to a practical lack of uniformity which makes the attempted collection from appellants invalid. In support of this contention appellants insert in the record matters designed to show how the statutory scheme works or fails to work in the several municipalities and districts to which reference is made.

Long prior to the enactment of Chapter 10 here considered, cities and school districts within the Territory were authorized to and did levy and collect taxes for municipal and school purposes under and pursuant to municipal and school district ordinances. The one percentum tax called for by Chapter 10 and directed by §4 thereof to be collected in the cities and districts in the manner prescribed by their local tax laws, was a tax apart from and in addition to the regular municipal and district taxes. §4(c) of Chapter 10 in providing for the collection of the Chapter 10 levy by the cities and districts, provided "such cities may assess and collect an additional tax on real and personal property situate in

the said cities not to exceed the amount allowed by law, which tax shall be assessed and collected at the same time and in the same manner as the tax provided in §3 of this Act."

The record shows that in the year 1949 there was considerable diversity as between the various cities and districts in the manner in which taxes were assessed and collected. Thus the City of Fairbanks had an ordinance No. 384 which had been in effect since 1946 and which provided for the assessment, levy and collection of taxes on real and personal property within the city. On September 26, 1949, a tax for school and municipal purposes upon all taxable real and personal property in that city was levied at the rate of 20 mills "in addition to the 1% territorial general property tax." By resolution of October 10, 1949, this was amended to provide for a levy of 20 mills under Ordinance No. 324 and the tax under the territorial property tax law was set at the rate of zero mills. On October 21, 1949, the Council of the City of Juneau levied a tax of 20 mills. In the same year the Board of Directors of Juneau Independent School District made a school tax levy of 10 mills. "Of this amount 7 mills was used for school purposes within the school district and the remaining 3 mills was turned over to the Territory of Alaska pursuant to the provisions of the Alaska property tax Act." In 1949, the City of Douglas levied taxes on all real and personal property within the city at a rate of 15 mills. No other taxes were levied for that year.

In addition, the various local ordinances and resolutions varied considerably in respect to the assessment and collection of taxes. Thus the Juneau Independent School District taxes became delinquent after November 15, but if half were paid on that day the other half did not become delinquent until after May 15 of the following year. A similar provision existed in respect to

the taxes of Douglas Independent School District, and the Fairbanks Independent School District. In the City of Juneau if taxes were paid by June 15, a discount of 2% was allowed. The same was true in the City of Douglas and in the Douglas Independent School District. Some of these taxing areas' penalties and interest were at the rates of 10% and 6% and in others they were higher. Some of the ordinances provided that the owner of personal property assessed should be personally liable for the taxes, and in some no such provision was made.

It is the view of the appellants that aside from the Juneau Independent School District, which as above mentioned, retained the proceeds of 7 mills and turned 3 mills over to the Territory, these various municipalities and districts simply ignored the mandate of Chapter 10 and wholly neglected to levy or collect the 1% tax purportedly provided by §3. They point to the express recital in the Fairbanks resolution that the tax under the Territory general property tax law was set at the rate of zero mills. Attention is called to the fact that Chapter 10 provides no machinery by which the levy and collection of the 1% tax by the cities and districts could be enforced or compelled. The argument is that the territorial legislature by its failure in this respect has permitted a practical discrimination and a denial of the equal protection of law to these appellants and to owners of property outside cities and districts who thus in fact are required to carry the whole burden of tax support for the territorial government so far as the general property tax is concerned.

We note that in the year 1949, each of these school districts and municipalities levied, assessed and collected a tax of at least ten mills and the inquiry is whether such a levy and collection does not satisfy the requirement of Chapter 10 that there shall be levied and collected a tax of one percentum of the true and full

value of the property. It is suggested that where a tax of more than ten mills was collected, the first ten mills of the tax assessed would be deemed levied and collected under Chapter 10 and the balance constitute the "additional tax" authorized by §4 of the statute.

This in fact was the view presented by these same appellants when they were here before. *Mullaney v. Hess,* 189 F.(2d) 417. At that time it will be recalled they were attempting to sustain the injunction which they had procured against the collection of the taxes here involved. Our decision was that in view of the right of the present appellants to pay their taxes under protest and to bring an action at law to secure a refund, their adequate remedy at law prevented the maintenance of a suit in equity to procure an injunction. B ng their argument upon the view which they then took to the effect that the first ten mills in each city or district was an attempted levy under Chapter 10, the present appellants then argued that since they were confronted with an attempt to collect taxes in numerous taxing units, the equitable remedy by way of injunction should be permitted in order to avoid a multiplicity of suits. In rejecting this argument this court then said (p. 421): "The answer to this contention is that none of the municipalities or school districts have attempted to assess or collect a tax under the Act except in one instance already mentioned in which case the tax (on boats) was voluntarily paid."

Appellants say that this court has thus made an adjudication that the municipalities and school districts mentioned did not in fact assess or collect any tax under this Act. Apart from any such finding or determination, it might well be that in view of the presumption that official duty has been regularly performed, we should hold that these municipal and district levies to the extent of the first ten mills thereof were in compliance

with that portion of §4 which requires the tax levy under the provision of §3 to be assessed and collected by the municipality or district.

But assuming the facts to be as recited in the language just quoted from *Mullaney v. Hess, supra,* this means no more than that certain city and district officials failed to take due notice of the requirements of Chapter 10. What they omitted to do was to state expressly that the first ten mills of their levy was made in compliance with Chapter 10, and represented the 1% tax called for by §4 thereof.[5]

It is to be noted that we are dealing here with the year 1949 only, which was the first year of the operation of the new law. It was a time when public officials in communities as scattered as those here referred to might neglect properly to label their levies, and this through mere inadvertence, inattention or misunderstanding. Such failure to conform is not generally deemed to be such a violation of a tax uniformity requirement as to render the collection of all taxes under the law invalid. "Nor does the equal protection clause prohibit inequality in taxation which results from mere mistake or error in judgment of tax officials . . . or which is not shown to be the result of intentional or systematic undervaluation of some but not all of the taxed property in a single class." *Charleston Assn. v. Alderson,* 324 U.S. 182, 190, 191.

We find here no evidence of any deliberate attempt by the Territory to provide that the General Property Tax

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[5] The school tax levy of the Juneau Independent School District, referred to above, would appear to contain an appropriate express reference to Chapter 10 in providing that the three mills not used for school purposes should be "turned over to the Territory of Alaska pursuant to the provisions of the Alaska Property Tax Act."

should not be collected from city or district property. But even if there had been an express provision to that effect, it could not be held to be outside the permissible range of legislative classification for tax purposes, if the whole scheme, in practical effect, imposes substantially the same tax burden on all property, wherever situated. In *Alaska Steamship Co. v. Mullaney,* 180 F.(2d) 805, 818, we held that this uniformity provision of the Organic Art established standards which were substantially the same as the equal protection limitations of the Fourteenth Amendment as applied to tax legislation by a State. We noted there that these limitations and restrictions do not prohibit reasonable classification, and we quoted from *Madden v. Kentucky,* 309 U.S. 83, 88, the statement: "In taxation, even more than in other fields, legislatures possess the greatest freedom in classification." Cf. *Walters v. City of St. Louis,* 347, U.S. 231, 237.

We think the territorial legislature could justly regard the maintenance of adequate government and governmental facilities, including schools, in these municipalities and districts to be as much a public purpose and as entitled to tax support as the maintenance of any other territorial facility. A classification which would provide in substance that all property should pay taxes at the same rate but that taxes collected from property within municipalities and districts should be used for local public purposes, while those collected from property outside such cities and districts should fall into the general treasury of the territory, would not be an unreasonable classification within the rule of *Madden v. Kentucky, supra.*[6]

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[6] "Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in

We are concerned, not with names or labels applied to taxes, nor with diversity of collecting agencies, but rather with the substantial impact and bearing upon the property and owners affected. In *Charleston Ass'n. v. Alderson, supra,* the Supreme Court noted "the well established rule that the Constitutional prohibition applies only to taxation which in fact bears unequally on persons or property of the same class and that mere differences in modes of assessment do not deny equal protection unless they are shown to produce such inequality."

Some emphasis is placed upon the provisions of the local ordinances granting delay in payment of half of the tax imposed when the first half is paid on time and permitting a discount of 2% if the whole tax is paid in advance. We are not required by the issues tendered here to express an opinion as to whether a discount of such character could be permitted in respect to the 1% property tax called for by §§3 and 4 of the statute. If and when such an issue arises we could then deal with

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taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it." Compare the tax on shares of stock upheld in *Travellers' Ins. Co. v. Connecticut,* 185 U.S. 364, 368, where "The resident is not called upon to pay any of the expenses of the State, but only to bear his proportional share of those of the municipality. The nonresident is called upon to pay no share of the expenses of the municipality, but only to contribute to the support of the State."

the question whether Chapter 10 must be construed as not permitting such a discount in respect to the 1% tax. As for the variation in time of required payment of taxes and in the interest and penalties charged on delinquent taxes as between the various cities and districts, we deem none of them of sufficient consequence to affect the validity of Chapter 10.

The appellants further seek recovery of their protested taxes because of alleged defects in the statute's provisions for the taxation and assessment of mining claims and claimed irregularities in the assessments thereunder. Here the two appellants approach from different angles. Hess lists the statute's special provisions for assessing mines as another respect in which it lacks uniformity. The Mining Company on the other hand objected on the ground that its mining claims were not assessed in compliance with the law. Both assert that this portion of the statute does not comply with the provisions of the Organic Act relating to the assessment of such claims.

Section 9 of the Organic Act (*supra,* note 1) makes special exception as to mining claims as follows: " * * * except that unpatented mining claims and non-producing patented mining claims, which are also unimproved, may be valued at the price paid the United States therefor, or at a flat rate fixed by the legislature, but if the surface ground is used for other than mining purposes, and has a separate and independent value for such other purposes, or if there are improvements or machinery or other property thereon of such a character as to be deemed a part of the realty, then the same shall be taxed according to the true and full value thereof."

Section 3 of Chapter 10 provides: "For the purposes of this section the assessed value of unimproved, unpatented mining claims which are not producing, and non-producing patented mining claims upon which the

improvements originally required for patent have become useless through deterioration, removal or otherwise, is hereby fixed at $500.00 per each 20 acres or fraction of each such claim, except that if the surface ground of any such claim is used for other than mining purposes and has a separate and independent value for such other purposes, the valuation as pertains to such non-mining uses and of improvements incidental to such uses shall be according to the full and true value thereof."

It should be noted that if this section does conform to the authority thus granted in the portion of §9 of the Organic Act quoted above, then appellants may not complain of the fact that it makes a discrimination between mining claims and other types of property. This is something which Congress has authorized. No equal protection clause such as that directed by the Fourteenth Amendment to the States restricts the power of Congress. *Helvering v. Lerner Stores Co.,* 314 U.S. 463, 468; *Steward Machine Co. v. Davis,* 301 U.S. 548, 584. As the authorized discrimination here cannot be said to be so extreme, or so devoid of reasonable basis as to be wanting in due process, we find no constitutional question present. This special treatment of mines has no bearing on the uniformity requirement of §9, as it is an express exception thereto.

"Appellants say the provisions of §3, just quoted, are not in compliance with the Organic Act. They say it does not fix a "flat rate"; that "$500. per each 20 acres or fraction of each such claim," is not at a flat rate. We disagree. Among the definitions of "flat" in Funk and Wagnalls New Standard Dictionary is the following: "Not varying with changing conditions; uniform; as a flat rate." We think that what Congress here authorized was a system of valuation not varying according to market or other values, but based upon a uniform

system which disregarded such varying values. The fact that some claims are much smaller than others, and some embrace much less than 20 acres does not make this any less a flat rate. In the field of water distribution by a local utility, flat rates are sometimes charged, as distinguished from metered rates. Such a rate, calculated and charged to householders on the basis of so much per room, is a "flat rate." And so is the one fixed here. That some claims are less than 20 acres is as unimportant as the fact that in the case of the water rate mentioned, not all rooms will be of equal size.

Appellants call attention to the fact that the quoted provision of §3 falls short of the full authorization of the Organic Act. The latter permits the flat rate for all unpatented mining claims. §3 extends it only to those "which are not producing." Appellants fail to show how they could possibly suffer in consequence of this legislative renunciation which was of course something for the legislature to decide.[7] Appellants' arguments based on the assessment of mining claims are without merit.

Finally we are told we must strike down the statute

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[7] Appellant Mining Company was assessed upon its Red Cliff claim containing 0.603 acres, upon 16 patented claims in one group, and upon ten patented claims in another group. Each of these 27 claims was assessed at $500.

The briefs contain considerable discussion of how a full size lode claim, containing 20.611 acres, must be assessed under §3. Without explaining why that should be so, appellants say to apply a value of $1,000 would not make this a "flat rate." Appellee suggests, as did the trial court, that the 0.611 acres could be disregarded, under the rule *de minimis*. It is not shown that either appellant presents a case of that character, or that any single lode claim has been assessed at more than $500.

because by an amendment to §3 it was provided that the owner of a boat or vessel might elect to pay a stated sum per ton of the vessel's registered tonnage, in lieu of payment of tax on assessed values determined as in the case of other property. Intervening appellant cannot complain of this provision for it made this election and paid the tonnage tax. The other appellant, who has no boats, has failed to show that this provision resulted in any discrimination as against him, or furnished any boat owner any advantage. In any event, the placing of such property in a class by itself is not forbidden to the legislature by any requirement of uniformity.

The judgment is affirmed.

(Endorsed:) Opinion. Filed May 25, 1954.

Paul P. O'Brien, Clerk.

APPENDIX B

JUDGMENT

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

LUTHER C. HESS and ALASKA JUNEAU GOLD MINING COMPANY, a Corporation, *Appellants,* vs. KARL F. DEWEY, Commissioner of Taxation, Territory of Alaska, *Appellee.*	No. 13,533

APPEAL from the United States District Court for the Territory of Alaska, Division No. 1.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Territory of Alaska, Division No. 1.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered: May 25, 1954.

May 25, 1954.

APPENDIX C

Chapter 10, Session Laws of Alaska, 1949

Section 1. TITLE. This Act may be cited as the "Alaska Property Tax Act."

Section 2. DEFINITIONS. As used in this Act, the following words and terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(a) The word "assessor" means an authorized representative of a Board of Assessment and Equalization designated to perform the duties of making assessments in a judicial division.

(b) The word "board" means a Board of Assessment and Equalization.

(c) The word "Collector" means the Tax Commissioner or his authorized representative, employee or agent designated by him.

(d) The word "division" means judicial division as understood and recognized in Alaska.

(e) The word "improvements" include all buildings, structures, fences and additions erected upon or affixed to the land, whether or not the title of the land has been acquired by any particular person.

(f) The word "include," when used in a definition contained in this Act, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(g) The word "person" means and includes any individual, trustee, receiver, firm, partnership, joint venture, syndicate, association, corporation, trust, or any other group acting as a unit.

(h) The words "personalty" or "personal property"

shall mean all machinery, equipment, household goods, and other tangible personal property which is located on or used in connection with particular land, or owned, possessed or used independently of any particular land.

(i) The word "property" means and includes real property, improvements, and personalty, as herein defined.

(j) The words "real property" or "land" means any estate or interest therein, including permit or license rights, and improvements thereon, and shall include all timber on patented lands.

(k) The words "Tax Commissioner" means the Tax Commissioner of the Territory of Alaska.

(i) The words "tax lien" embrace liens for penalties, interest and costs as well as for unpaid taxes.

(m) The word "Territory" means the Territory of Alaska.

Section 3. LEVY OF TAX. For the calendar year of 1949, and each calendar year thereafter there is hereby levied, and there shall be assessed, collected and paid, a tax upon all real property and improvements and personal property in the Territory at the rate of one per centum of the true and full value thereof. For the purposes of this section the assessed value of unimproved, unpatented mining claims which are not producing, and non-producing patented mining claims upon which the improvements originally required for patent have become useless through deterioration, removal or otherwise, is hereby fixed at $500.00 per each 20 acres or fraction of each such claim, except that if the surface ground of any such claim is used for other than mining purposes and has a separate and independent value for such other purposes, the valuation as pertains to such non-mining uses and of improvements

incidental to such uses shall be according to the full and true value thereof.

Section 4. TAX UPON PROPERTY WITHIN INCORPORATED CITIES AND DISTRICTS. The tax levied under the provisions of Section 3 upon the property within the limits of an incorporated city or town, independent school district or incorporated school district in the Territory shall be assessed, collected and enforced in the manner prescribed by the property tax law of the municipality or district, by and at the expense of the municipalities and districts prorated proportionately between each, provided that amounts levied but which prove uncollectible, and the cost of foreclosure on delinquent accounts shall be borne by the city or school and public utility district.

All of the tax levied under this Act which is so collected shall be remitted to such municipalities or school districts as follows:

(a) As to cities which are not a part of an independent school district the municipal tax collection authority shall turn the amount of tax collected over to the city treasurer.

(b) As to incorporated school districts the tax collectors thereof shall turn the amount of tax collected over to the district school board.

(c) As to cities which are part of an independent school district the amount of taxes collected shall be turned over to the city treasurer. The city treasurer is hereby authorized and empowered to turn over to the school board such part of the funds collected as may be determined by the city council from time to time necessary to efficiently carry on school functions in said school district. Such cities may assess and collect an additional tax on real and personal property situate in said cities not to exceed the amount allowed by law,

which tax shall be assessed and collected at the same time and in the same manner as the tax provided in Section 3 of this Act, which said funds shall be used by said cities for general municipal purposes. Regarding that part of independent school districts outside of town bounds, the tax collection authority therein shall turn the taxes collected over to the district school board; provided that the millage levy for school purposes shall be uniform within incorporated school districts whether said districts includes another incorporated municipality or not and any unused remainder up to the maximum levy hereunder shall revert to the Territorial Treasurer except that portion collected within any incorporated municipality within the boundary of such school district in which case such remainder, unused for school purposes, shall revert to the treasury of the incorporated municipality in which it may be collected.

(d) Taxes collected hereunder within a public utility district shall be handled in a like manner to those collected in cities or other incorporated municipalities, including collection costs, remissions and school millage levy provisions as set forth herein.

(e) In all cases where such local units are to receive such tax collections, the local tax collection authority shall, upon delivery of the money as above set forth, obtain a receipt in duplicate therefor and forward the duplicate thereof to the Tax Commissioner. The time or times to be set for payment on account of such collections shall be prescribed by the Tax Commissioner. Such other accounting as may be indicated shall be made to the Tax Commissioner at such times and in such manner as may be prescribed by him.

The tax money so collected which remains after remissions have been made shall be transmitted to the Tax Commissioner at such intervals and in such manner as

he shall direct, for deposit with the Treasurer, to be covered into the general fund of the Territory.

Section 5. TAX ON PROPERTY OUTSIDE INCORPORATED CITIES AND SCHOOL DISTRICTS. The tax levied under the provisions of Section 3 upon property outside the limits of an incorporated city, independent school district, or incorporated school district or public utility district in the Territory shall be assessed, collected and enforced as provided in this Act.

Section 6. EXEMPTIONS.

(a) Property shall be exempt from taxation hereunder when used exclusively for education, religious, or charitable purposes.

(b) The property of the United States, of the Territory, and of any municipal corporation, independent school district, incorporated school district, public utility district and association operating utilities under arrangement with the Rural Electrification Administration, shall be exempt hereunder.

(c) The personal property of any person to the value of $200.00 shall be exempt hereunder.

(d) The property of any organization not organized for business purposes, whose membership is composed entirely of the veterans of any wars of the United States, or the property of the auxiliary of any such organization, and all moneys on deposit belonging to such organization shall be exempt hereunder, except any such property which produces rentals or profits for such organization.

(e) The laws exempting certain property from levy and sale on execution shall not apply to taxes levied hereunder or to the collection thereof.

(f) New industrial, commercial and business construction shall be exempt during the period of construc-

tion and until the plants or buildings are occupied or operated, but in no case shall this exemption exceed three taxable years from the time of beginning of construction. Modifications and repairs to existing structures shall not be considered new construction under this provision.

(g) All homesteads upon which entry has been made in accordance with the land laws of the United States shall be exempt from the date of entry until one year after the date upon which patent shall have been granted and final title acquired. Such exemptions shall include all improvements upon such homesteads pertaining to residential or agricultural purposes.

(h) INDUSTRIAL INCENTIVE CLAUSE: The Tax Commissioner is authorized to grant incentive exemptions hereunder in the manner and to the extent hereinafter set forth:

(1) An exemption of one-half of the tax otherwise imposed hereunder, or such other lesser fraction thereof as the Tax Commissioner may deem to be a necessary and proper encouragement to new industry as hereinafter defined, for such period not exceeding 10 taxable years from the date production is commenced, upon new plants and buildings and other installations, real estate and equipment, as are constructed and procured by new industrial enterprises, as hereinafter defined, to manufacture or process products which constitute industry new to Alaska with resultant establishment of new payrolls in Alaska.

The terms "new industry" or "new industrial enterprises" as used herein shall mean undertaking for the purpose of manufacturing or processing products not manufactured or processed in Alaska on the effective date hereof and for which plants have not already been established in Alaska.

(2) The Tax Commissioner shall establish and promulgate general standards and rules conformable to this Act for determining the eligibility of applicants for exemptions hereunder, and the extent to which exemptions for such applicants respectively are to be granted, including such factors as: permanence of the industry involved; the amount of its capital investment; whether it is a seasonal or continuous operation; whether it will likely be marginal because of distance from principal markets; transportation costs and differential in cost of production in Alaska as compared to cost of production elsewhere; the number of resident Alaskan workmen who will be given employment; and other pertinent factors related to improving the economy of the Territory of Alaska. He shall also consider in each case the recommendation of the Divisional Board of Assessment of the division in which the new industry is proposed to be established, which recommendation shall be obtained by the applicant in advance of the application and attached thereto. After all such factors are taken into consideration, the decision of the Tax Commissioner shall be rendered, subject, however, to final approval of the Divisional Board of Assessment. If after studying the Tax Commissioner's findings and decisions, the said Board, acting by majority of its members, is unable to agree with said decision, it shall, after reasonable notice to the Tax Commissioner and the affected new industry, hold a hearing and make the decision, which shall be final, except that when such exemption decision expires, the position of the new industry may be re-evaluated and extension granted within the maximum limits allowed hereunder, in the same manner as provided for the granting of the original exemption.

(3) All exemptions granted hereunder shall be negotiated and consummated prior to the initial commencement of production by the applicant.

(4) Exemptions granted by the Tax Commissioner hereunder shall be applicable within or without municipalities, school districts or public utility districts.

Section 7. RETURNS.

(a) On or before the 15th day of July in the year 1949, and on or before the 15th day of March in each year thereafter, every person shall submit in duplicate to the assessor of the judicial division, a return of his property, and of the property held or controlled by him in a representative capacity, in the manner prescribed in this Act, which return shall be based on values existing as of January 1 in the same year.

* * *

Section 11. VALUATION. Property shall be assessed at its full and true value in money, as of January 1 of the assessment year. In determining the full and true value of property in money, the person making the return, or the assessor, as the case may be, shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which the property would sell at auction, or at a forced sale, either separately or in the aggregate with all of the property in the taxing district, but he shall value the property at such sum as he believes the same to be fairly worth in money at the time of assessment. The true value of property shall be that value at which the property would generally be taken in payment of a just debt from a solvent debtor.

Section 12. ASSESSMENT. Every person shall be assessed and taxed annually on his property in the division in which the property is situated, and where any parcel of land is situated partly in one division and partly in another or partly within a municipality or

school district and partly elsewhere, the assessment in respect of that parcel shall be made in the division or district within which the greater part of the property is situated. Real property and personalty shall be separately assessed.

Section 13. To Whom Assessed.

(a) Subject to subsection (b) and (c) of this section, property shall be assessed and taxed in the name of the owner or claimant or where the property is owned, occupied or claimed by two or more persons, it shall be assessed and taxed in the names of the owners, occupiers or claimants jointly.

(b) Where a verified statement is furnished showing that property has become the subject of a contract of sale or been leased by the owner to another person, the name of the other person shall be noted on the assessment roll and like notice of the assessment shall be sent to him as to the owner, in which case the taxes assessed in respect of the property may be received either from the owner or from the purchaser or tenant, or from any optionee, prospective distributee, purchaser or encumbrancer who desires to safeguard the title to the property.

(c) Land of the United States or the Territory which is held under any mining location, lease, license, agreement for sale, accepted application for purchase, or otherwise, shall be assessed and taxed in the name of the occupier according to the value of his interest therein (except as above modified in this Act with respect to certain mining claims); but no assessment or taxation in respect of land so held or occupied shall in any way affect the rights of the United States in the land.

(d) Where the property assessed is owned by two or more persons in undivided shares, each owner shall be assessed on the undivided interest at the proportion of

the assessed value of the property that his undivided interest bears to the whole.

Section 14. CONTENT OF ASSESSMENT ROLL.

(a) The assessor of each division shall prepare an annual assessment roll for each division covering property outside of municipalities and school districts and public utility districts, after consideration of all returns made to him pursuant to this Act, and after careful inquiry from such sources as he may deem reliable. * * *

Section 15. ASSESSMENT NOTICE.

(a) The assessor, before completion of the assessment roll, shall give to every person named thereon a notice of assessment, showing the valuation and assessment of his property and the amount of taxes thereon, in such form as the Tax Commissioner may prescribe. At least 60 days must be allowed from date of such mailing within which to appeal to the Board against the assessment. * * *

Section 16. COMPLETION OF ASSESSMENT ROLL. The assessor shall complete the annual assessment roll for the year 1949 on or before the 1st day of September and for each year thereafter on or before the 1st day of July of that year, which shall be based on values of January 1st immediately preceding, and shall certify the same by attaching thereto a certificate in a form to be prescribed by the Tax Commissioner. Such supplementary assessment rolls shall be prepared and certified as may be deemed necessary or expedient. * * *

Section 23. SITTINGS AND RECORDS OF BOARD. For the purpose of scrutinizing the assessment roll and its supplements and taking corrective action thereon, or for hearing appeals in respect of any assessment roll, or from any assessment made under this Act, the Board

in each division shall sit and adjourn from time to time as its business may require, and shall record its proceedings and decisions. During all periods when a Board is not in session, its record and decisions shall be kept by the assessor.

Section 24. NOTICES BY BOARD.

(a) Where the name of any person is ordered by the Board to be entered on the assessment roll, by way of addition or substitution, for the purpose of assessment, the Board shall cause notice thereof to be mailed by the assessor to that person or his agent in like manner as provided in Section 15, giving him at least 60 days from the date of such mailing within which to appeal to the Board against the assessment.

(b) Whenever it appears to the Board that there are overcharges or errors or invalidities in the assessment roll, or in any of the proceedings leading up to or subsequent to the completion of the roll, and there is no appeal before the Board in which the same may be dealt with, the Board may notify parties affected with the view of hearing them.

Section 25. APPEAL BY PERSON ASSESSED.

(a) Any person whose name appears on the assessment roll for any division or who is assessed in any district, may appeal to the Board with respect to any alleged overcharge, error, omission or neglect of the assessor.

(b) Notice of appeal, in writing, shall be filed with the Board within 60 days after the date on which the assessor's notice of assessment was given to the person appealing. Such notice must contain a certification that a true copy thereof was mailed or delivered to the assessor. If notice of appeal is not given within that period, right of appeal shall cease, unless it is shown to

the satisfaction of the Board that the taxpayer was unable to appeal within the time so limited.

(c) A copy of the notice of appeal must be sent to the assessor as above indicated. * * *

Section 27. NOTICE OF HEARING. Not less than 30 days before the sitting at which the appeal is to be heard, the Board shall cause a notice to be mailed by the assessor to the person by whom the notice of appeal was given, and to every other person in respect of whom the appeal is taken, to their respective addresses as last known to the assessor. The form of such notice shall be prescribed by the Tax Commissioner.

Sectoin 28. HEARING OF APPEAL.

(a) At the time appointed for the hearing of the appeal, the Board shall hear the appellant, the assessor, other parties to the appeal and their witnesses, and consider the testimony and evidence adduced, and shall determine the matters in question on the merits and render its decision accordingly.

(b) If any party to whom notice was mailed as above set forth fail to appear, the Board may proceed with the hearing in his absence.

(c) The burden of proof in all cases shall be upon the party appealing.

* * *

Section 30. COLLECTION UNAFFECTED BY APPEAL. Neither the giving of a notice of appeal by any taxpayer, nor any delay in the hearing of the appeal by the Board shall in any way effect the due date, the delinquency date, the interest, or any liability for payment provided by this Act in respect of any tax which is the subject matter of the appeal. In the event of the tax being set aside or reduced by the Board on appeal, the Tax Commissioner shall refund to the taxpayer the

amount of the tax or excess tax paid by him, and of any interest imposed and paid on any such tax or excess.

Section 31. APPEAL TO COURT. Any person feeling aggrieved by any order of the Board shall have the right of appeal on a *de nova* basis to the District Court for the Territory of Alaska in the division in which the matter is pending. Such appeal shall be pursued as nearly as may be in accordance with the procedure prescribed in Sections 68-9-4 to 68-9-14 inclusive, Alaska Compiled Laws Annotated, 1949, governing appeals from a Justice's Court in civil cases and the Tax Commissioner shall promulgate uniform regulations adapting the above referenced procedure for perfecting such appeals.

Section 32. TIME OF PAYMENT. Taxes for a calendar year shall be payable annually the first day of February of the ensuing year. Failure to pay on said due date shall cause the tax to become delinquent and shall subject the property assessed to the interest and penalty additions hereinafter provided. Payments of taxes may be made at any time before their due date, but no discount shall be allowed for such early payment.

* * *

Section 34. LIEN.

(a) The taxes assessed upon property, together with interest and penalty, shall be a lien thereon from and after assessment until paid, and no sale or transfer of such property shall in any way affect the lien of such taxes.

(b) Liens for taxes hereunder shall be first liens and paramount to all prior and subsequent encumbrances, alienations and descents of the property.

Section 35. INTEREST.

(a) For failure to pay taxes when due, interest

inclusive of penalty at the rate of one per cent per month shall be added on the first of each month until the tax is paid or the property sold hereunder, but not to exceed the legal rate of interest in the aggregate.

(b) Where a tax becomes payable in respect to property assessed on a supplementary assessment roll, the like interest shall be added to and recovered as a part of the tax as might have been imposed if the return and the assessment had been made at the time prescribed by this Act and the tax had been duly levied and had not been paid.

* * *

Section 42. RECOVERY OF UNPAID LIENS. On or after the first day of April of any year, the Tax Commissioner may, with the assistance of the Attorney General, file in the office of the clerk of the district court in the division in which property subject to delinquent taxes is situated, a list of all parcels affected by unpaid liens. Thereafter the Tax Commissioner shall, unless the matter be otherwise resolved, proceed to foreclosure of said liens in substantially the manner prescribed in Sections 22-2-8 to 22-2-18, both inclusive, of Alaska Compiled Laws Annotated, 1949, for the foreclosure of land registration liens, and all pertinent provisions of said sections are hereby adopted as applicable hereto.

Section 43. BOARDS OF ASSESSMENT AND EQUALIZATION.

(a) There is hereby created and established for each judicial division a Board of Assessment and Equalization.

* * *

(f) Each Board, within its judicial division, shall have the power and duty, subject to the approval of the Tax Commissioner as to all expenses of Board operations, to—

(1) Exercise general supervision and direct the activities of assessment and equalization of property taxes;

(4) Hold hearings and conduct investigations required in the administration of the assessment provisions of this Act and hear and determine appeals involving assessments of property, at such points in their respective divisions as will serve the general convenience of the public, provided that written minutes may be kept of the testimony of witnesses without making a word by word record thereof;

* * *

(8) Perform all duties specifically imposed and exercise all powers conferred upon the Board.

Section 44. TAX COMMISSIONER. The Tax Commissioner shall be the collector of taxes levied under this Act and enforce collections with the aid of such divisional collectors or other deputy collectors and personnel as he may see fit to appoint. He shall administer all provisions of this Act except those specifically assigned to a board or under the purview of municipal or school district authority. The Tax Commissioner shall prescribe and furnish all necessary forms, and promulgate and publish all needful rules and regulations conformable herewith for the assessment and collection of any tax herein imposed, and shall voucher for expenditure according to law.

Section 45. SEVERABILITY CLAUSE. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of the Act and such application to other persons or circumstances shall not be affected thereby.

Section 46. EMERGENCY CLAUSE. An emergency is hereby declared to exist and this Act shall take effect immediately upon its passage and approval.

Approved February 21, 1949.

* * * * * * * * * * *

Chapter 88, Session Laws of Alaska, 1949

Section 1. Section 3 of the Alaska Property Tax Act which was House Bill No. 2 of this session of the Legislature, is hereby amended by adding thereto at the end thereof the following language:

With respect to any boat or vessel engaged in marine service on a commercial basis and subject to the provisions of this Act, the owner of said boat or vessel may elect:

(a) To pay the tax levied hereunder on such boat or vessel on the basis of the value thereof as defined herein, or

(b) To pay $4.00 per net ton of such vessel's registered tonnage, but in any event the amount payable hereunder, for each such boat or vessel, shall not be less than $20.00 per annum.

Approved, March 23, 1949.

APPENDIX D

Pertinent Portions of Section 9 of Alaska Organic Act

(Act of August 24, 1912, Ch. 387, Sec. 9, 37 Stat. 514)

* * * all taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the actual value thereof. * * * and all laws passed or attempted to be passed, by such legislature in said Territory inconsistent with the provisions of this section shall be null and void; * * *.

APPENDIX E

Act of Aug. 24, 1912, c .387, Sec. 9, 37 Stat. 514, as amended June 3, 1948, c. 396, 62 Stat. 302, 48 USCA Sec. 78.

All taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the true and full value thereof, except that unpatented mining claims and non-producing patented mining claims, which are also unimproved, may be valued at the price paid the United States therefor, or at a flat rate fixed by the legislature, but if the surface ground is used for other than mining purposes, and has a separate and independent value for such other purpose, or if there are improvements or machinery or other property thereon of such a character as to be deemed a part of the realty, then the same shall be taxed according to the true and full value thereof.